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6 IN THE UNITED STATES DISTRICT COURT FOR THE

7 NORTHERN DISTRICT OF CALIFORNIA

8 SAN JOSE DIVISION

9
10 BOY RACER, INC.,

) **No. C-11-02833 EJD**

11) Plaintiff,

**NOTICE OF VOLUNTARY DISMISSAL
OF ACTION WITHOUT PREJUDICE
AS TO THREE ANONYMOUS DOE
DEFENDANTS; [PROPOSED] ORDER**

12) v.

13) DOES 2-72,

14) Defendants.

15)
16)
17 **NOTICE OF VOLUNTARY DISMISSAL OF ACTION WITHOUT PREJUDICE AS TO
18 THREE ANONYMOUS DOE DEFENDANTS**

19 **NOTICE IS HEREBY GIVEN** that, pursuant to Federal Rule of Civil Procedure 41(a)(1),
 20 Plaintiff voluntary dismisses all claims brought in this action against the three (3) anonymous Doe
 21 Defendants associated with the three motions pending in this case: Motion to Quash or Modify
 22 Subpoena (ECF No. 9), Motion to Quash or Modify Subpoena (ECF No. 10), and Motion to Quash
 23 or Modify Subpoena (ECF No. 11). To preserve privacy for these individuals, Plaintiff does not
 24 address these Doe Defendants by name, or by their Internet Protocol ("IP") addresses, and merely
 25 identifies them by the motions they filed in this case. This is sufficient to notify the Internet Service
 26 Providers ("ISPs") who have been properly notified by each subscriber of their pending motions.
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At this point, therefore, for further clarity, considering the proceeding voluntary dismissals of the three Doe Defendants associated with the above motions, this action is now essentially Boy Racer, Inc. v. Does 5-72. The Motions to Quash, and the Responses thereto, should therefore no longer be pending before the Court. The hearing on these Motions to Quash is scheduled for October 11, 2011 at 10:00 a.m. in Courtroom 5 of the San Jose Federal Courthouse in front of Magistrate Judge Grewal. (*See* ECF No. 12). In light of the above, the Motions to Quash are moot, and the hearings are no longer necessary. Plaintiff requests that this hearing be taken off of the Court's motion calendar.

In accordance with Federal Rule of Civil Procedure 41(a)(1), the three (3) Doe Defendants being dismissed here have neither filed answers to Plaintiff's Complaint, nor a motion for summary judgment. Dismissal under Federal Rule of Civil Procedure 41(a)(1) is therefore appropriate. Inclusive of this dismissal, Doe Defendants have hereby been dismissed from this action without prejudice, and their Motions to Quash or Modify Subpoena (ECF Nos. 9, 10, 11) should hereby be denied as moot as their associated IP addresses are no longer part of this suit.

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1 Plaintiff still maintains claims against the other anonymous Doe Defendants remaining in this
2 action, and reserves the right to name such individuals and/or serve them when, and if, Plaintiff is in
3 possession of their identifying information in the future of this ongoing case.
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5 Respectfully Submitted,
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7 STEELE HANSMEIER PLLC,
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DATED: September 27, 2011

9 By: /s/ Brett L. Gibbs, Esq.
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In light of the above, Doe Defendants associated with Motions to Quash or Modify Subpoena (ECF Nos. 9,10, and 11) are hereby DISMISSED from this case without prejudice, and, therefore are no longer part of this suit. Additionally, Motions to Quash or Modify Subpoena (ECF Nos. 9, 10, and 11) are DENIED as the issues raised therein are now MOOT. Likewise the hearing on these Motions to Quash, currently, scheduled for October 11, 2011 at 10:00 a.m. in Courtroom 5 of the San Jose Federal Courthouse in front of Magistrate Judge Grewal, is hereby removed from the Court's calendar. The Motions to Quash are terminated from the docket.

Further, it is ORDERED that Plaintiff serve copies of this Order onto the relevant ISPs.

IT IS SO ORDERED.

Dated: September 28, 2011

Edward J. Davila
United States District Court Judge

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 27, 2011, all individuals of record who are deemed to have consented to electronic service are being served a true and correct copy of the foregoing document, and all attachments and related documents, using the Court's ECF system, in compliance with Local Rule 5-6 and General Order 45.

/s/ Brett L. Gibbs
Brett L. Gibbs, Esq.